

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6715 of 1996

with

SPECIAL CIVIL APPLICATION NO. 7856 OF 1996

WITH

SPECIAL CIVIL APPLICATION NO. 8425 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HITESH N VYAS AND OTHERS.

Versus

GUJARAT ELECTRICITY BOARD

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Appearance:

SPECIAL CIVIL APPLICATION NO. 6715 OF 1996

MR JS YADAV for Petitioner

MR TUSHAR MEHTA for Respondent No. 1

Respondent No. 2, 3 SERVED BY  
DIRECT SERVICE.

SPECIAL CIVIL APPLICATION NO. 7856 OF 1996

Mr. H.K.RATHOD FOR THE PETITIONERS

Mr. Tushar Mehta, advocate for respondent No.1  
Rest served.

SPECIAL CIVIL APPLICATION NO. 8425 OF 1996.

Mr.H.K.RATHOD FOR THE PETITIONERS

Mr.Tushar Mehta for respondent No.1

Rest served.

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 13/03/97

ORAL JUDGEMENT

In this group of three petitions, under Article 226 of the Constitution of India, common questions have been raised against common respondent Gujarat Electricity Board ('GEB'). Therefore, they are being disposed of by this common judgment.

The main challenge in focus is against the circular of the Board dated 17.6.1996 whereby zonewise common seniority list is devised and evolved which hitherto used to be circlewise.

The petitioner in Special civil application No. 6715 of 1996 claims to be entitled to be regularised as he has been in employment with the Board since November 1989 . According to his case, he was relieved from service after his completing 3 years of apprenticeship course. He had also worked as temporary employee for a period of one or two months as a daily wager. It is also the case of the petitioner that his service is wrongly terminated and he is entitled to be reinstated and regularised. It appears from the record that the petitioner was working as lineman and apprentice and he was appointed for a period of three years. On completion of three years' apprenticeship, he was relieved from work by the order dated 16/9/1992.

In special civil applications No.7856 and 8425 of 1996 , the petitioners have challenged the aforesaid circular inter alia contending that they have joined the training of apprentice lineman prior to issuance of the aforesaid circular and,therefore, they have sought that the said circular is not applicable to the petitioners. They have also sought direction against the respondents not to transfer the select list or names of the petitioners from transmission circle ,Gondal to any other circle,zonal office and not to operate common list from zonal office. In short, the petitioners have prayed for a declaration that the circular is inapplicable to their case and they should be governed by earlier policy of the circlewise seniority.

The petitioners in both these petitions had joined

apprenticeship lineman training for a period of two years in transmission circle at Amreli. The petitioners have challenged the said circular contending that it is arbitrary, mala fide and violative of Articles 14 and 16 of the Constitution of India.

The respondent-Board has inter alia contended that the petitions are not maintainable as the petitioners have no right on the said post. The petitioners were apprentices and they were appointed only for a specific period and duration under the provisions of Apprenticeship Act, 1961 and the said period is over since long. It is in this context that the Board has raised a contention that apprentice has no legal right to be appointed on permanent basis merely on the ground that such person has worked as an apprentice.

It is the case of the respondent-Board that it has examined the matter of appointment of lineman-helper from those persons who have completed their tenure as apprentice. The matter was considered threadbare at the highest administrative level of the Board and had culminated into a policy decision in the larger interest of apprentices-linemen. Accordingly, circular dated 17.6.1996 came to be issued. The said circular which contains policy decision is issued by the Board with a laudable object and to see that similarly situated persons are not given different treatment, as per the case of the Board.

The Board has contended that it is not obliged to employ those persons who have completed the period of apprenticeship under the Apprenticeship Act. However, being a statutory board constituted under the Electricity (Supply) Act, 1948, the board keeps a list of such persons who have completed their period of apprenticeship circlewise, like that, list of persons who have completed apprenticeship in transmission circle was different and the list of persons who have completed their apprenticeship in Operation and Maintenance Division and Generation Division was also different. In the post of any vacancy in transmission circle, the persons entered in the list kept for transmission circle only used to be considered for being appointed. In the same manner, in the post of vacancy in other circles or divisions, used to be filled up from the respective list, as a result of which, there was anomalous situation and harm to the meritorious persons for getting appointment early. Apprentices who had completed their apprenticeship in transmission circle were getting appointment very fast. As against that, substantially less number of vacancies were

required to be filled up in O & M division and, therefore, the persons named in the similar list of O & M division used to get very few chances of being appointed. It is, therefore, submitted by the Board that persons appointed as apprentices who came to be transferred in O & M division had less chances of being appointed permanently since their names shall be included in O & M division, where less number of job opportunities were available in comparison to transmission circle. But for the said fortuitous circumstance, all such apprentices were similarly situated in order to obviate such anomalous situation and to see that apprentices who have completed their tenure as apprentices with the Board get early appointment in view of the larger and wider avenues open and available in the zonewise scheme.

It is noticed from the affidavit in reply that there are three main divisions in any zone which are as under :

1. Transmission.
2. Operation and Maintenance ( O & M)
3. General division.

Before the impugned zonewise seniority circular came to be issued, the practice prevailing till then was to maintain list of such persons like the petitioners who have completed apprenticeship period divisionwise. In other words, list of persons who have completed their apprenticeship in transmission division was different and lists of persons who have completed their apprenticeship in operation and maintenance ( O & M) and general division were also different. What used to happen was that as and when any vacancy arose, say for example, in transmission division, persons entered in the list kept for transmission division (who have completed their tenure of apprenticeship in transmission division) used to be considered for being appointed. In the same manner, vacancies arising in other two divisions used to be filled up from their respective lists of divisions.

As a result of the practice of keeping different lists for three different divisions, a serious anomaly used to take place and though persons entered in the respective three lists were similarly situated, they had a feeling that they were being given discriminatory treatment because of fast growing and expanding division, like that transmission division as the transmission candidates were more. As against this, substantially less number of vacancies were required to be filled up in O & M division. Therefore, persons named in list of O & M used

to get very few chances of being appointed ,but for the fortuitous circumstances that initially, at the time of being appointed as apprentice, person was posted in O and M division,such person stood substantially less chance for being appointed permanently since his name will be included in the list only for O & M division where less number of job opportunities was available.. But for such fortuitous circumstances, all such persons were similarly situated.

It is noticed from the record that this is the case why apprentices formed a union known as "Gujarat Electricity Board Linemen Apprentices Union. It is a registered union bearing No. 5420 under the Trade Unions Act,1926. No doubt, there is no dispute about the fact that the said union is not recognised by the respondent-Board.

The said union took up the cause of the apprentices and agitated on the very point and repeatedly requested the Board to remove the said anomalous situation. Not only that, in order to press the said demand, Relay Fast was also undertaken by the members of the union from 12.2.1996 to 11.5.1996 with one of the demands that persons who have completed their training in O & M division should be treated at par with those who were initially appointed in transmission circle since they are otherwise eligible and similarly situated for being appointed in regular service.

It is further noticed from the record that the representatives of the said union and the respondent-Board had held discussions and dialogue on the said demand. Since it was felt by the respondent-Board that there was reasonableness and genuineness in the demand of the Union about emergence of discriminatory treatment to the similarly situated persons, the respondent-Board issued the impugned circular.

Pursuant to the impugned circular, the respondent-Board decided and directed to prepare and maintain common list for such zone like that common list of transmission circle/ division and O & M division. The respondent-Board therefore started preparing common list containing names of those apprentices who have successfully concluded their tenure of apprenticeship both in transmission circle as well as O & M circle. Such list in reality, is in the nature of a seniority list and the persons who complete apprenticeship period are placed first in the said list and accordingly in order of their respective seniority, their names are placed and arranged in the list.

It is also specifically denied by the respondent-Board that there is no system of recruitment of helpers. It is the case of the respondent-Board that it has adopted a very systematic process for making recruitment with regard to post of helper and various circulars and standing orders are issued. There is no dispute about the fact that no apprentice or person is appointed out of turn except in case to fill up a post belonging to SC/ ST or OBC candidates. It could, therefore, be seen from the aforesaid discussion that the Board has adopted criteria in pursuance of the impugned circular whereby an attempt is made to satisfy one of the demands of the concerned union and to obliterate the effect of discrimination amongst apprentices who are placed equally but not getting appointment early for the simple reason of maintenance of seniority list circlewise.

The respondent-Board has raised various other contentions. The contention that the petitions are not maintainable as the petitioners who are apprentices have no right until they are appointed by the respondent-Board. Reliance is placed on the provisions of the Apprentices Act, 1961 ('the Act'). Section 18 of the Act clearly provides that an apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to him unless they are specifically made applicable to him. Therefore, a trade apprentice is not an employee or a worker. There is no dispute about the fact that the petitioners are apprentices and they are not appointed as employees after completion of their apprenticeship training. It, therefore, becomes clear that the petitioners are not the workers or employees. Therefore, it is not competent for them to maintain petitions by invoking extraordinary writ jurisdiction.

There is a provision in Section 26 of the Act that the Central Government shall appoint a suitable person as the Central Apprenticeship Adviser and the State Government shall also appoint a suitable person as State Apprenticeship Adviser. The Central Apprenticeship Adviser shall be the Secretary to the State Apprenticeship Council and the State Apprenticeship Adviser shall be the Secretary to the State Apprenticeship Council. The powers and duties of such Councils and Apprenticeship Advisers are also enumerated and defined in the Act and Central Apprenticeship Council Rules, 1962. There is no dispute about the fact that there is no condition in that contract of apprenticeship

that after completion of apprenticeship training, the apprentice shall be absorbed. Therefore, apprentices under the Act trained in any industry, establishment or any employer without commitment for absorption are not automatically entitled to be absorbed.

It may also be mentioned that in view of the specific provisions incorporated and prescribed in Section 20 of the Act, petitions will not be competent directly in relation to a dispute or disagreement between the employer and apprentice. Section 20 clearly provides that any disagreement or dispute between an employer and an apprentice arising out of the contract to apprenticeship ought to be referred to the Apprenticeship Adviser for decision and if the decision is erroneous, the aggrieved party may within 30 days from the date of communication of such decision, prefer an appeal against the decision of the Adviser to the Apprenticeship Council. Thus, there is a provision for appeal against the decision of the Apprenticeship Adviser. It becomes thus clear that initially, a dispute can be raised before Apprenticeship Adviser and against his decision. It will be subject to appeal before the Apprenticeship Council. An appeal is maintainable under Section 20(2) against the decision of the Apprenticeship Adviser under Section 20(1). Nothing has been successfully shown or indicated as to why provisions of Section 20 are not resorted to and provisions of Article 226 of the Constitution are straightway invoked by the petitioners. In the absence of any convincing or reasonable ground or material, it would not be appropriate to straightway challenge any disagreement or dispute by invoking extraordinary, equitable, plenary writ jurisdiction.

Mr. Mehta, learned counsel for the respondent-Board has stated that the respondent-Board, pursuant to the impugned circular, has prepared a common seniority list containing names of apprentices who have successfully completed their tenure or training period of apprenticeship in each zone like that, transmission or O & M division in order of respective seniority of apprentices and, therefore, the purport and design of the decision of the Honourable apex court rendered in U.P. State Road Transport Corporation and another v. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and others, AIR 1995, S.C. 1115

will be subserved and observed by the respondent-Board. The Honourable apex court in the aforesaid decision has observed that the following will be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training :

- 1 Other things being equal, a trained apprentice should be given preference over direct recruits.
- 2 For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of the Supreme court in Union of India vs. Hargopal, AIR 1987 sc 1227 would permit this.
3. If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.
4. The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentice, preference shall be given to those who are senior.

It is also observed by the Honourable Supreme court that it would not be just and proper to go merely by what has been stated in Section 22 (1) of the Act, or for that matter, in the model contract form. What is indeed required is to see that the nation gets the benefit of time, money and energy spent on the trainees, which would be so when they are employed in preference to non-trained direct recruits. Since there is unequivocal assurance to this effect that spirit and design of the directions of the aforesaid decision shall be strictly observed by the respondent-Board, no further discussion and directions would become necessary.

Mr. Mehta has also stated that the case of the petitioner in Special civil application No. 6715 of 1996 (Mr. H.N. Vyas) for the post of Meter Tester will be considered on his applying in pursuance of the advertisement and selection process subject to his fulfilling the requisite qualifications and eligibility criteria insofar as post of helper in the Laboratory of the respondent-Board is concerned.

In view of the aforesaid facts and circumstances, the petitions under Article 226 of the Constitution of India are required to be rejected. Accordingly, they are



rejected. Notice issued therein shall stand discharged  
with no order as to costs.

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